Supreme Court, U. S.
FILED
DEC 1 1977
MICHAEL RODAK, JR., CLERK

No. 77-421

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
Petitioner,

v.

MCI TELECOMMUNICATIONS CORPORATION, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL REPLY OF PETITIONER

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December 1977

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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No. 77-421

AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
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MCI TELECOMMUNICATIONS CORPORATION, ET AL.,
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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SUPPLEMENTAL REPLY OF PETITIONER

The United States has filed a memorandum supporting the grant of certiorari to review the decision below. In seeking certiorari, the Federal Communications Commission, AT&T and USITA represented that the case presents issues of fundamental importance concerning the statutory determinations to be

made under Section 214 of the Communications Act and the scope of existing specialized carrier authority. The Solicitor General's memorandum (p. 6) confirms and underscores that representation.

Nothing said by Southern Pacific, in its supplemental opposition to certiorari, diminishes the import of the Solicitor General's memorandum or the need for certiorari. The reasons for certiorari "at this time" (compare SP supp. opp. 2) are obvious: the lower court has expressly decided significant statutory issues which affect the basic processes of the Commission and it has decided those issues in conflict with the language of the statute, the FCC's construction of it, and over forty years of consistent administrative practice. The further proceedings ordered by the lower court do not involve any further examination of these legal issues.

Similarly, nothing Southern Pacific does or could say about the decisions of Ninth [1] and Third Circuits [2] can alter the basic fact pertinent to certiorari: both decisions directly conflict with the decision below on the scope of specialized carrier authority. The scope of that authority is a matter of continuing and urgent importance, affecting the validity of thousands of outstanding grants and numerous related FCC decisions. See AT&T reply 2-4, 7-9.

The immediate impact and continuing importance of the issues presented is beyond rational dispute.

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[1] *Washington Utilities & Transportation Commission* v. *FCC*, 513 F.2d 1142 (9th Cir), *cert. denied*, 423 U.S. 836 (1975).

[2] *Bell Telephone Co. of Pennsylvania* v. *FCC*, 503 F.2d 1250 (3rd Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975).

Only recently Southern Pacific moved for summary reversal of two more FCC decisions, now awaiting review in the lower court, on the ground that those cases are governed by the decision in this case.[3] The Solicitor General's memorandum amply confirms that the legal questions raised and the conflict in the circuits warrant review in this Court.

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[3] On October 7, 1977, Southern Pacific moved for "summary reversal" in both cases on the ground that "the *ratio decidendi* of the Commission decisions under review has been squarely rejected and repudiated by this Court [the Court of Appeals] in *MCI Telecommunications Corp.* v. *FCC*, decided July 28, 1977 (Court *Execunet* decision)." SP motion, p. 2 (footnote omitted), in *Southern Pacific Communications Co.* v. *FCC*, D.C. Cir., Nos. 77-1195 and 77-1196.

CONCLUSION

For the reasons stated above and in AT&T's petition, certiorari should be granted.

Respectfully submitted,

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